APPEAL NO. 041736
FILED SEPTEMBER 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 16, 2004. The hearing officer determined that the respondent's (claimant) compensable injury of _____, includes a left shoulder injury in the nature of impingement syndrome and partial rotator cuff tear and a right ankle joint effusion and swelling injury, but does not include a right hip or right foot injury; that the claimant had disability, as a result of her compensable injury, from November 12, 2002, to September 12, 2003; and that the date of maximum medical improvement (MMI) and the correct impairment rating (IR) cannot be determined pending the appointment of a second designated doctor. In its appeal, the appellant (self-insured) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In addition, although neither party appealed the hearing officer's determination that Dr. L, the designated doctor appointed by the Texas Workers Compensation Commission (Commission), "created the appearance that he abandoned impartiality in his certification of [MMI] and [IR]," the self-insured contends that the hearing officer erred in ordering the appointment of a second designated doctor rather than adopting the rating of another doctor. The self-insured did not appeal the hearing officer's determination to add the issue of whether the compensable injury included a left shoulder injury in the nature of impingement syndrome and partial rotator cuff tear, but only his resolution of that issue. The appeal file does not contain a response to the self-insured's appeal from the claimant. In addition, the claimant did not appeal the determination that her compensable injury does not include a right hip or right foot injury.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes a left shoulder injury in the nature of impingement syndrome and partial rotator cuff tear and a right ankle joint effusion and swelling injury, and that she had disability from November 12, 2002, to September 12, 2003. Those issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the disputed issues and the hearing officer was acting within his province as the fact finder in giving more weight to the evidence tending to demonstrate that the claimant's compensable injury included left shoulder and right ankle injuries and that she had disability for the period found. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The self-insured also argues that the hearing officer erred in ordering the appointment of a second designated doctor rather than adopting the rating of another doctor, after rejecting the designated doctor's certification of MMI and IR based upon his determination that the designated doctor's report gave the appearance that he had abandoned impartiality. We cannot agree that the hearing officer erred in deciding that the appointment of a second designated doctor was appropriate in these circumstances. Indeed, in Texas Workers' Compensation Commission Appeal No. 971088, decided July 28, 1999, we specifically recognized that it was appropriate to appoint a second designated doctor in circumstances where, as here, questions arise as to the objectivity and impartiality of the designated doctor. That determination is grounded in the fact that the 1989 Act and the Commision rules clearly establish the parties' entitlement to an objective opinion from the designated doctor. Thus, where there are questions about whether they have received one, it is proper to appoint a second designated doctor to obtain an impartial opinion. In addition, we note that in this instance, the hearing officer's decision to appoint a second designated doctor is bolstered by the fact that, as the hearing officer determined, "[n]o other certification of [MMI] or [IR] in evidence addressed the entire scope of, and limited itself to, the Claimant's injury."

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge